

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Russell J. Fenstermaker,

Civ. No. 16-363 (SRN/BRT)

Petitioner,

v.

ORDER

Kathy Halvorson, Warden, MCF-Faribault,

Respondent.

Roy G. Spurbeck, Esq., Minnesota State Public Defender, counsel for Petitioner.

James B. Early, Esq., Minnesota Attorney General's Office, and James P. Spencer, Esq., Olmstead County Attorney's Office, counsel for Respondent.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated March 17, 2017. No objections have been filed to that Report and Recommendation in the time period permitted. Based upon the Report and Recommendation of the Magistrate Judge, upon all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. Kathy Halvorson is substituted as the Respondent in this matter;
2. Petitioner's petition for a writ of habeas corpus (Doc. No. 1) is **DENIED**;
3. Petitioner's request for a certificate of appealability is **GRANTED**;
4. The Report and Recommendation (Doc. No. 11) is **ADOPTED**; and

5. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: March 31, 2017

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge